

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

JERMAINE TYRONE FULLER,	)	Civil Action No.: 4:12-cv-2755-RBH-TER
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	
	)	<b>ORDER</b>
JAMES F. ARWOOD, ANDRZEJ E. KALINSKI, and TAMMY DOVER,	)	
	)	
	)	
Defendants.	)	
	)	

Plaintiff, who is proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983. Presently before the court are Plaintiff's Motion for Issuance of Subpoena (Document # 59), Motion for Extension of Time (Document # 60), and Motion to Strike Motion for Summary Judgment (Document # 63).<sup>1</sup> All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. The undersigned will address each motion in turn.

Plaintiff asks the court to issue a subpoena to Wayne File at Unique Visions for "all records in your possession of the tint work performed at the York County Detention Center in the fall of 2009, by your company, Unique Visions." However, the discovery deadline in this case was March 10, 2014, and Plaintiff filed his Motion on May 9, 2014. Although the Fourth Circuit has not addressed the issue, an emerging majority of courts have held that a Rule 45 subpoena is discovery and is untimely if not served within the discovery deadline set by the court. See, e.g., Harris v. Tietex Intern, Inc., No. 7:08-3020-HFF-WMC, 2009 WL 3157278, \*1 (D.S.C. Sept. 28, 2009); Karagiannopoulos v. City of Lowell, No. 3:05-cv-401-FDW-DCK, 2008 WL 948261, \*2 (W.D.N.C.

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<sup>1</sup>Also pending is Defendants' Motion for Summary Judgment (Document # 55), which will be addressed by separate Report and Recommendation.

April 2, 2008); Dreyer v. GACS, Inc., 204 F.R.D. 120, 122 (N.D.Ind.2001); Mortgage Information Services, Inc. v. Kitchens, 210 F.R.D. 562, 566 (W.D.N.C.2002); Marvin Lumber and Cedar Co. v. PPG Indus., Inc., 177 F.R.D. 443, 443-444 (D.Minn.1977); Intergra Lifesciences I, Ltd. v. Merck, 190 F.R.D. 556, 561 (S.D.Cal.1999); 7 Moore's Federal Practice § 34.03[2][a]. Thus, Plaintiff's Motion for Issuance of Subpoena is denied as untimely.

Plaintiff also seeks an extension of time to conduct additional discovery and to respond to the Defendants' Motion for Summary Judgment. As noted above, the discovery deadline in this case was March 10, 2014. Plaintiff asserts that additional discovery is necessary to reply to defenses raised in the Motion for Summary Judgment, namely, Defendants' qualified immunity argument. However, Defendants assert qualified immunity defenses in their Answer (Document # 26), and, thus, Plaintiff has been on notice since the Answer was filed that Defendants would assert this defense. Accordingly, Plaintiff fails to show good cause for extending the discovery deadline and his Motion for Extension of Time is denied in that respect. However, the Motion for Extension of Time is granted to allow Plaintiff additional time to respond to the Motion for Summary Judgment. Plaintiff shall have until June 18, 2014, to file his response.

Finally, Plaintiff asks the court to strike portions of the Motion for Summary Judgment. Plaintiff argues that Defendants have misconstrued his Amended Complaint and these misconstructions should be stricken from the Motion to keep the focus on Plaintiff's actual claim and avoid confusion. Plaintiff's Motion is improper. He can address any problems he has with the Motion for Summary Judgment in his response. Therefore, Plaintiff's Motion to Strike is denied.

For the reasons discussed above, Plaintiff's Motion for Issuance of Subpoena (Document # 59) is **DENIED**, Motion for Extension of Time (Document # 60) is **DENIED** as to the request to conduct additional discovery and **GRANTED** as to the request for additional time to respond to the

Motion for Summary Judgment, and Motion to Strike Motion for Summary Judgment (Document # 63) is **DENIED**. **Plaintiff's response to the Motion for Summary Judgment is due no later than June 18, 2014.**

**IT IS SO ORDERED.**

s/Thomas E. Rogers, III  
Thomas E. Rogers, III  
United States Magistrate Judge

June 4, 2014  
Florence, South Carolina